IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.37354 of 2007

1. RAJESH YAJI @ RAJESH KUMAR MISHRA
2. VINOD YAJI ALIAS VINOD KUMAR MISHRA
BOTH SONS OF LATE DAMODAR YAJI, RESIDENT OF VILLAGE- CHAKSIRAI, P.S. UJIARPUR, DISTRICT- SAMASTIPUR

---------- **PETITIONERS**

Versus

1. THE STATE OF BIHAR
2. NIRASI DEVI W/O SRI DASHRATH DAS, RESIDENT OF VILLAGE-CHAKSIRAI, POST- DHANDAULI, P.S. UJIARPUR, DISTRICT – SAMASTIPUR

---------- **OPP.PARTIES**

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3 01-12-2008 Heard Mr.Amresh Kumar Sinha, the learned counsel for the petitioner as also Mr. Jharkhandi Upadhaya, the learned A.P.P. for the State and Mrs. Soni Srivastava, the learned counsel for Opp.Party no.2.

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The grievance of the petitioners is against the order dated 7.9.2006 passed in Ujiarpur P.S. Case no.115 of 2004, whereby the learned Sub Divisional Judicial Magistrate, Dalsinghsarai, Samastipur has differed with the police report and taken cognizance against the petitioners under Section 304 /34 I.P.C.

This application has to be allowed and the matter is remitted back to the learned Sub Divisional Judicial Magistrate, Dalsinghsarai for reconsideration and pass clear orders in respect of taking cognizance order.

Section 304 consists of two parts, namely, Part-I and Part-II. That apart, there is also Section 304A and Section 304B. From the impugned order it does not appear as to under what provisions the

impugned covers and under which all these four provisions the learned Magistrate has taken cognizance.

The learned Magistrate is, therefore, directed to peruse the case diary and other materials available on the record and then pass fresh orders in respect of cognizance.

With the aforesaid observation this application is allowed and the matter is remitted back to the learned court below to act in accordance with observations made above and to pass orders in accordance with law.

(Abhijit Sinha, J)

NKS/-

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